

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KEVIN H. WATTS

Claimant

VS.

PAVERS, INC.

Respondent

AND

AETNA CASUALTY & SURETY COMPANY

Insurance Carrier

Docket No. 217,530

ORDER

Respondent and its insurance carrier appeal from the October 31, 1997 Award entered by Administrative Law Judge Bruce E. Moore. The Appeals Board heard oral argument on May 13, 1998.

APPEARANCES

Claimant appeared by his attorney, Rodney G. Nitz of Salina, Kansas. Respondent and its insurance carrier appeared by their attorney, C. Stanley Nelson of Salina, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopts the stipulations listed in the Award by the Administrative Law Judge.

ISSUES

The Award entered by the Administrative Law Judge found the claimant had a 69 percent work disability as a result of the injuries he suffered in his November 24, 1995 work-related accident. Respondent appeals those findings. The issues for determination by the Appeals Board are:

- (1) Did claimant meet with personal injury by accident on November 24, 1995 that arose out of and in the course of his employment with respondent?
- (2) What is the nature and extent of claimant's disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed.

The Award by the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat them here. The Appeals Board finds them to be accurate, and it adopts the findings and conclusions of the Administrative Law Judge as its own. Specifically, the Appeals Board agrees that claimant has sustained his burden of proof that he suffered injury by accident on the date alleged and that his accident arose out of and in the course of his employment with respondent. The Appeals Board also agrees with the finding that claimant has proven a work disability of 69 percent.

There is no reduction in the disability award for a preexisting functional impairment under K.S.A. 44-501(c) because no impairment was proven to have preexisted. Claimant's preexisting spondylolisthesis condition was not an impairment. The condition was undiagnosed, asymptomatic and claimant was under no prior restrictions. Therefore, all of claimant's disability is attributable to the work-related accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated October 31, 1997 should be, and is hereby, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Rodney G. Nitz, Salina, KS
C. Stanley Nelson, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director